

AMENDED IN ASSEMBLY JULY 27, 2004

AMENDED IN ASSEMBLY JUNE 29, 2004

SENATE BILL

No. 1100

Introduced by Committee on Budget and Fiscal Review

January 12, 2004

~~An act relating to the Budget Act of 2004.~~ *An act to amend Section 37022 of the Public Resources Code, and to amend Sections 6592, 17052.2, 17053.30, 19164, and 23630 of, to amend, repeal, and add Section 6248 of, to add Section 19777.5 to, to add Article 4 (commencing with Section 19590) to Chapter 7 of Part 10.2 of Division 2 of, to add Chapter 9.1 (commencing with Section 19730) to Part 10.2 of Division 2 of, and to repeal and add Article 2 (commencing with Section 7070) of Chapter 8 of Part 1 of Division 2 of, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1100, as amended, Committee on Budget and Fiscal Review.
~~Budget Act of 2004 Taxation.~~

(1) Existing law imposes specified taxes, including sales and use taxes that are administered by the State Board of Equalization, and personal income and corporate taxes collected and administered by the Franchise Tax Board.

This bill would require the State Board of Equalization and the Franchise Tax Board to administer tax amnesty programs during the period beginning February 1, 2005, and ending on March 31, 2005, inclusive, or during any other 2-month period ending before June 30, 2005, as provided.

(2) *The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. Under existing law, there is a presumption that tangible personal property shipped or brought into this state by the purchaser was purchased from a retailer for storage, use, or other consumption in this state.*

This bill would, until July 1, 2006, expand this presumption to a vehicle, vessel, or aircraft, if that vehicle, vessel, or aircraft is (1) purchased by a California resident, (2) subject to California's registration or property tax laws during the first 12 months of ownership, or (3) used or stored in this state more than 1/2 of the time during the first 12 months of ownership. This bill would provide that the expanded presumption may be controverted by documentary evidence, as specified.

This bill would specify that its provisions do not apply to a vehicle, vessel, or aircraft, that is purchased, or that is subject to a binding purchase contract, on or before the operative date of the bill.

This bill would provide that the expanded presumption does not apply to aircraft brought into this state, on or after the operative date of the bill, for the purpose of repair, retrofit, or modification, except as specified.

This bill would require the Legislative Analyst's office to conduct a study of the economic impacts of the amendments to these provisions, and report its findings to the Legislature on or before June 30, 2006.

(3) *Existing law authorizes the Franchise Tax Board to administer, among other things, the Personal Income Tax Law and the Corporation Tax Law and to collect amounts due thereunder. Existing law also authorizes the Franchise Tax Board to charge fees for the provision of specified services provided to governmental entities and for the provision of specified forms and publications provided, upon request, to eligible taxpayers.*

This bill contains legislative findings of the need to recover the costs incurred for the provision of specialized tax services provided to individuals and entities, and would authorize the Franchise Tax Board to charge fees for the provision of specified specialized tax services to individuals and entities. This bill would provide that the fees received would be treated as reimbursement for the Franchise Tax Board's costs.

(4) *The Personal Income Tax Law authorizes various credits against the taxes imposed by those laws, including a credit against taxes*



imposed by those laws for credentialed teachers in an amount equal to specified amounts, depending upon years of service as a teacher.

This bill would suspend that credit for taxable years beginning on or after January 1, 2004, and before January 1, 2006.

(5) The Natural Heritage Preservation Tax Credit Act of 2000 requires the Wildlife Conservation Board to implement a program under which property, as defined, may be contributed to the state, any local government, as defined, or to any nonprofit organization designated by a local government, based on specified criteria, in order to provide for the protection of wildlife habitat, open space, and agricultural lands.

The Personal Income Tax Law and the Corporation Tax Law authorize a credit against the taxes imposed by those laws in an amount equal to 55% of the fair market value of any qualified contribution, as defined, contributed during the taxable year pursuant to the Natural Preservation Tax Credit Act of 2000, as provided. The total amount of tax credits that may be awarded in the fiscal years 2000–01, 2001–02, 2002–03, 2003–04, and 2004–05 is limited to \$100,000,000, as provided.

(6) Existing law suspended the award of tax credits under the act in the 2002–03 fiscal year and authorized any amounts that would have been awarded during that time, but for that suspension, to be awarded in the 2003–04 fiscal year and the remainder, if any, in the 2004–05 fiscal year.

This bill would extend the years during which the tax credits may be awarded under the act to include the 2005–06, 2006–07, and 2007–08 fiscal years. This bill would also provide that credits may not be awarded between July 1, 2002, and June 30, 2005, unless revenues lost from those credits from the General Fund are reimbursed, as provided.

(7) This bill would declare that it is to take effect immediately as an urgency statute.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2004.~~

Vote: ~~majority~~ ^{2/3}. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. It is the intent of the Legislature to enact~~
- 2 ~~necessary statutory changes relating to the Budget Act of 2004.~~

1 *SECTION 1. Section 37022 of the Public Resources Code is*
2 *amended to read:*

3 37022. (a) No more than a total of one hundred million
4 dollars (\$100,000,000) in tax credits may be awarded pursuant to
5 this division.

6 (b) Tax credits may be awarded pursuant to this division in the
7 fiscal years 2000–01, 2001–02, 2002–03, 2003–04, ~~and 2004–05,~~
8 2005–06, 2006–07, *and 2007–08*. No tax credits may be awarded
9 subsequent to fiscal year ~~2004–05~~ 2007–08 without further
10 statutory authorization.

11 (c) In addition to the limitations in subdivisions (a) and (b), ~~no~~
12 ~~and except as provided in subdivision (d), tax credits may not be~~
13 awarded pursuant to this division between July 1, 2002, and June
14 30, ~~2003~~ 2005, inclusive. ~~Any amounts that would have been~~
15 ~~awarded pursuant to this division in the 2002–03 fiscal year, but~~
16 ~~for the application of the preceding sentence, may be awarded in~~
17 ~~the 2003–04 fiscal year and the remainder, if any, in the 2004–05~~
18 ~~fiscal year.~~

19 (d) *Tax credits may be awarded pursuant to this division*
20 *between July 1, 2002, and June 30, 2005, inclusive, only if the*
21 *amount of all lost revenue resulting from the award of tax credits*
22 *during that time is reimbursed by transfer to the General Fund of*
23 *moneys that are not from the General Fund.*

24 (e) When a person submits an application to the board pursuant
25 to Chapter 4 (commencing with Section 37010) that is
26 conditionally approved by the board, and tax credits are not
27 awarded due to the prohibition set forth in subdivision (c), until
28 June 30, 2005, the person shall remain eligible, without a
29 requirement that a subsequent application be submitted, to be
30 considered for the award of tax credits pursuant to this division, if,
31 on or before June 30, 2005, moneys become available to reimburse
32 the General Fund pursuant to subdivision (d).

33 SEC. 2. Section 6248 of the Revenue and Taxation Code is
34 amended to read:

35 6248. (a) On and after the effective date of this section there
36 shall be a rebuttable presumption that any vehicle, vessel, or
37 aircraft bought outside of this ~~State~~ state, and which is brought
38 into California within ~~90 days~~ 12 months from the date of its
39 ~~purchase, and which is~~ purchase, was acquired for storage, use,

1 or other consumption in this state and is subject to use tax if any
2 of the following occur:

3 (1) The vehicle, vessel, or aircraft was purchased by a
4 California resident as defined in Section 516 of the Vehicle Code.

5 (2) In the case of a vehicle, the vehicle was subject to
6 registration under Chapter 1 (commencing with Section 4000) of
7 Division 3 of the Vehicle Code, ~~was acquired for storage, use, or~~
8 ~~other consumption in this State Code~~ during the first 12 months of
9 ownership.

10 (3) In the case of a vessel or aircraft, that vessel or aircraft was
11 subject to property tax in this state during the first 12 months of
12 ownership.

13 (4) The vehicle, vessel, or aircraft is used or stored in this state
14 more than one-half of the time during the first 12 months of
15 ownership.

16 (b) This presumption may be controverted by documentary
17 evidence that the vehicle, vessel, or aircraft was purchased for use
18 outside of this state during the first 12 months of ownership. This
19 evidence may include, but is not limited to, evidence of registration
20 of that vehicle, vessel, or aircraft, with the proper authority,
21 outside of this state.

22 (c) This section does not apply to any vehicle, vessel, or aircraft
23 used in interstate or foreign commerce pursuant to regulations
24 prescribed by the board.

25 (d) The amendments made to this section by the act adding this
26 subdivision do not apply to any vehicle, vessel, or aircraft that is
27 either purchased, or is the subject of a binding purchase contract
28 that is entered into, on or before the operative date of this
29 subdivision.

30 (e) (1) Notwithstanding subdivision (a), aircraft brought into
31 this state for the purpose of repair, retrofit, or modification shall
32 not be deemed to be acquired for storage, use, or other
33 consumption in this state.

34 (2) This subdivision does not apply if, during the period
35 following the time the aircraft is brought into this state and ending
36 when the repair, retrofit, or modification of the aircraft is complete,
37 more than 25 hours of airtime are logged on the aircraft by the
38 registered owner of that aircraft or by an authorized agent
39 operating the aircraft on behalf of the registered owner of the
40 aircraft. The calculation of airtime logged on the aircraft does not

1 *include airtime following the completion of the repair, retrofit, or*
2 *modification of the aircraft that is logged for the sole purpose of*
3 *returning or delivering the aircraft to a point outside of this state.*

4 *(3) This subdivision applies to aircraft brought into this state*
5 *for the purpose of repair, retrofit, or modification on or after the*
6 *operative date of this subdivision.*

7 *(f) The amendments made by the act adding this subdivision*
8 *shall become operative on October 1, 2004.*

9 *(g) The Legislative Analyst's office shall conduct a study of the*
10 *economic impacts of the amendments made to this section by the*
11 *act adding this subdivision, and shall report its findings to the*
12 *Legislature on or before June 30, 2006.*

13 *(h) This section shall remain in effect only until July 1, 2006,*
14 *and as of that date is repealed.*

15 *SEC. 3. Section 6248 is added to the Revenue and Taxation*
16 *Code, to read:*

17 *6248. (a) On and after July 1, 2006, there shall be a*
18 *rebuttable presumption that any vehicle bought outside of this*
19 *State which is brought into California within 90 days from the date*
20 *of its purchase, and which is subject to registration under Chapter*
21 *I (commencing with Section 4000) of Division 3 of the Vehicle*
22 *Code, was acquired for storage, use, or other consumption in this*
23 *State.*

24 *(b) This section shall become operative on July 1, 2006.*

25 *SEC. 4. Section 6592 of the Revenue and Taxation Code is*
26 *amended to read:*

27 *6592. (a) If the board finds that a person's failure to make a*
28 *timely return or payment is due to reasonable cause and*
29 *circumstances beyond the person's control, and occurred*
30 *notwithstanding the exercise of ordinary care and the absence of*
31 *willful neglect, the person shall be relieved of the penalties*
32 *provided by Sections 6476, 6477, 6479.3, 6480.4, 6480.8, 6511,*
33 *6565, 6591, and 7051.2, 7073, and 7074.*

34 *(b) Except as provided in subdivision (c) any person seeking to*
35 *be relieved of the penalty shall file with the board a statement*
36 *under penalty of perjury setting forth the facts upon which he or*
37 *she bases his or her claim for relief.*

38 *(c) The board shall establish criteria that provides for efficient*
39 *resolution of requests for relief pursuant to this section.*

1 SEC. 5. Article 2 (commencing with Section 7070) of Chapter
2 8 of Part 1 of Division 2 of the Revenue and Taxation Code is
3 repealed.

4 SEC. 6. Article 2 (commencing with Section 7070) is added to
5 Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation
6 Code, to read:

7
8 Article 2. Tax Amnesty Program
9

10 7070. The board shall develop and administer a tax amnesty
11 program for taxpayers subject to Part 1 (commencing with Section
12 6001), as provided in this article.

13 7071. The tax amnesty program shall be conducted for a two
14 month period beginning February 1, 2005 through March 31,
15 2005, inclusive, or during a timeframe ending no later than June
16 30, 2005. The program shall apply to tax liabilities due and
17 payable for tax reporting periods beginning before January 1,
18 2003.

19 7072. (a) For any taxpayer who meets the requirements of
20 Section 7073:

21 (1) The board shall waive all penalties imposed by this part, for
22 the tax reporting periods for which tax amnesty is allowed for the
23 nonreporting or underreporting of tax liabilities or the
24 nonpayment of any taxes previously determined or proposed to be
25 determined.

26 (2) Except as provided in subdivision (b), no criminal action
27 shall be brought against the taxpayer, for the tax reporting periods
28 for which tax amnesty is requested, for the nonreporting or
29 underreporting of tax liabilities.

30 (b) This section does not apply to violations of this part for
31 which, as of the first day of the amnesty period specified in Section
32 7071, (1) the taxpayer is on notice of a criminal investigation by
33 a complaint having been filed against him or her or by written
34 notice having been mailed to him or her that he or she is under
35 criminal investigation, or (2) a court proceeding has already been
36 initiated.

37 (c) No refund or credit shall be granted of any penalty paid
38 prior to the time the taxpayer makes a request for tax amnesty
39 pursuant to Section 7073.

1 7073. (a) *This article shall apply to any taxpayer who, during*
2 *the amnesty period specified in Section 7071, meets all of the*
3 *following:*

4 (1) *Is eligible to participate in the tax amnesty program.*

5 (2) *Files a completed amnesty application with the board,*
6 *signed under penalty of perjury, to participate in the tax amnesty*
7 *program.*

8 (3) *Within 60 days after the conclusion of the tax amnesty*
9 *period, does all of the following:*

10 (A) *Files completed tax returns for all tax reporting periods for*
11 *which he or she has not previously filed a tax return and files*
12 *completed amended returns for all tax reporting periods for which*
13 *he or she underreported his or her tax liability.*

14 (B) *Pays in full the taxes and interest due for all periods for*
15 *which amnesty is requested, or applies for an installment*
16 *agreement under subdivision (b).*

17 (C) *For taxpayers who have not paid in full any tax liabilities*
18 *due and payable for tax reporting periods beginning before*
19 *January 1, 2003, pays in full the taxes and interest due for each*
20 *period for that portion of the proposed determination for each*
21 *period for which amnesty is requested or applies for an installment*
22 *payment agreement under subdivision (b).*

23 (4) *In the case of any taxpayer that has filed for bankruptcy*
24 *protection under Title 11 of the United States Code, submits an*
25 *order from a Federal Bankruptcy Court allowing the taxpayer to*
26 *participate in the amnesty program.*

27 (b) *The board may enter into an installment payment*
28 *agreement in lieu of the complete payment required under*
29 *subparagraph (B) of paragraph (3) of subdivision (a), but only if*
30 *final payment under the terms of that installment payment*
31 *agreement is due and is paid no later than June 30, 2006. The*
32 *installment payment agreement shall include interest on the*
33 *outstanding amount due at the rate prescribed by law. Failure by*
34 *the taxpayer to fully comply with the terms of the installment*
35 *payment agreement shall render the waiver of penalties null and*
36 *void, unless the board determines that the failure was due to*
37 *reasonable causes, and the total amount of tax, interest, and all*
38 *penalties shall be immediately due and payable.*

39 (c) *If, subsequent to the amnesty period specified in Section*
40 *7071, the board issues a deficiency determination upon a return*

1 *filed pursuant to subdivision (a), or upon any other nonreporting*
 2 *or underreporting of tax liability by any person who could have*
 3 *otherwise been eligible for amnesty, the board shall impose*
 4 *penalties at a rate that is double the rate of penalties described in*
 5 *law and criminal action may be brought under this part only with*
 6 *respect to the difference between the amount shown on that return*
 7 *and the correct amount of tax, or the amount of unreported or*
 8 *underreported tax, whichever the case may be. This action may not*
 9 *invalidate any waivers granted under Section 7072.*

10 *(d) If the board issues a deficiency determination under*
 11 *conditions described in subdivision (c), the board may issue that*
 12 *deficiency determination within 10 years from the last day of the*
 13 *calendar month following the quarterly period for which the*
 14 *amount is proposed to be determined.*

15 *(e) The application required under paragraph (2) of*
 16 *subdivision (a) shall be in the form and manner specified by the*
 17 *board, but in no case shall a mere payment of any taxes and interest*
 18 *due, in whole or in part, for any period otherwise eligible for*
 19 *amnesty under this part, be deemed to constitute an acceptable*
 20 *amnesty application under this part. For purposes of the preceding*
 21 *sentence, the application of a refund from one period to offset a tax*
 22 *liability for another period otherwise eligible for amnesty shall not*
 23 *be allowed without the filing of an amnesty application under this*
 24 *part.*

25 *7074. (a) Except for taxpayers who have entered into an*
 26 *installment payment agreement pursuant to subdivision (b) of*
 27 *Section 7073, there shall be added to the tax for each period for*
 28 *which amnesty could have been requested:*

29 *(1) For amounts that are due and payable on the last date of the*
 30 *amnesty period, an amount equal to 50 percent of the accrued*
 31 *interest payable under Section 6591 for the period beginning on*
 32 *the date in which the tax was due and ending on the last day of the*
 33 *amnesty period specified in Section 7071.*

34 *(2) An amount equal to 50 percent of the interest computed*
 35 *under Section 6591 on any final amount, including final*
 36 *deficiencies and self-assessed amounts, for the period beginning*
 37 *on the date in which the tax was due and ending on the last day of*
 38 *the amnesty period specified in Section 7071.*

39 *(b) The penalty imposed by this section is in addition to any*
 40 *other penalty imposed under this part.*

1 (c) Article 2 (commencing with Section 6481) does not apply
2 with respect to the assessment or collection of any penalty imposed
3 by subdivision (a).

4 (d) Notwithstanding Chapter 7 (commencing with Section
5 6901), a taxpayer may not file a claim for refund for any amounts
6 paid in connection with the penalty imposed in subdivision (a).

7 7075. Any taxpayer who has an existing installment payment
8 agreement under Section 6832 as of the start of the amnesty
9 program, and who does not participate in the amnesty program,
10 may not be subject to the penalty imposed under Section 7074.

11 7076. The board shall issue forms and instructions and take
12 other actions needed to implement this article. The provisions
13 contained in subdivision (c) of Section 19735, to the extent feasible
14 and practical, shall also apply to the board.

15 7077. The board shall adequately publicize the tax penalty
16 amnesty program so as to maximize public awareness of the
17 participation in the program. The board shall coordinate to the
18 highest degree possible its publicity efforts and other actions taken
19 in implementing this article with similar programs administered by
20 the Franchise Tax Board.

21 7078. Subdivision (b) of Section 19736, to the extent feasible
22 and practical, shall also apply to the board.

23 SEC. 7. Section 17052.2 of the Revenue and Taxation Code is
24 amended to read:

25 17052.2. (a) For each taxable year beginning on or after
26 January 1, 2000, and before January 1, 2002, ~~and~~ for each taxable
27 year beginning on or after January 1, 2003, and before January 1,
28 2004, and for each taxable year beginning on and after January
29 1, 2006, there shall be allowed as a credit against the "net tax" (as
30 defined by Section 17039) to a credentialed teacher an amount
31 equal to the amount determined in subdivision (b).

32 (b) The amount of the credit shall be the lesser of the amounts
33 computed under paragraph (1) or (2):

34 (1) In the case of any credentialed teacher who has, as of the last
35 day of the taxable year:

36 (A) Completed at least four but less than six years of service as
37 a credentialed teacher, the credit shall be two hundred fifty dollars
38 (\$250).

1 (B) Completed at least six but less than 11 years of service as
2 a credentialed teacher, the credit shall be five hundred dollars
3 (\$500).

4 (C) Completed at least 11 but less than 20 years of service as a
5 credentialed teacher, the credit shall be one thousand dollars
6 (\$1,000).

7 (D) Completed 20 or more years of service as a credentialed
8 teacher, the credit shall be one thousand five hundred dollars
9 (\$1,500).

10 (E) For purposes of determining years of service, years of
11 service performed as a teacher in a qualifying educational
12 institution, which otherwise meets the criteria specified in
13 paragraph (2) of subdivision (c) except that the qualifying
14 educational institution is not located in this state, in another state
15 shall qualify for each year the teacher was credentialed by the
16 public education agency in that state.

17 (2) Fifty percent of the amount determined as follows:

18 (A) Divide the amount received by the taxpayer as wages and
19 salary for services as a credentialed teacher, as defined in
20 paragraph (3) of subdivision (c), by the taxpayer's total adjusted
21 gross income from all sources.

22 (B) Multiply the taxpayer's total tax, as defined in paragraph
23 (4) of subdivision (c), by a ratio, not to exceed 1.00, that is
24 otherwise equal to the ratio determined for the taxpayer under
25 subparagraph (A).

26 (c) For purposes of this section, all of the following definitions
27 apply:

28 (1) "Credentialed teacher" means a person who holds a
29 preliminary or professional clear credential as determined by the
30 Commission on Teacher Credentialing pursuant to Article 1
31 (commencing with Section 44200) of Chapter 2 of Part 25 of
32 Division 2 of Title 2 of the Education Code and who teaches at a
33 qualifying educational institution.

34 (2) "Qualifying educational institution" means any
35 elementary, secondary, or vocational-technical school located in
36 this state providing education for kindergarten, grades 1 to 12,
37 inclusive, or any part thereof. "Qualifying educational
38 institution" includes an agency or instrumentality of the federal
39 government providing education for kindergarten, grades 1 to 12,
40 inclusive, or any part thereof, at any location within this state,

1 including an Indian reservation or a military installation located
2 within the geographical borders of this state, where a credentialed
3 teacher is employed by the federal government or an agency or
4 instrumentality thereof. “Qualifying educational institution”
5 includes any elementary, secondary, or vocational-technical
6 school located in California, that files an affidavit pursuant to
7 Sections 33190 and 33191 of the Education Code, and provides
8 education for kindergarten and grades 1 to 12, inclusive, or any
9 part thereof.

10 (3) “Wages and salaries for services as a credentialed teacher”
11 includes only those amounts received with respect to services
12 performed as a credentialed teacher, but does not include pensions
13 or other deferred compensation.

14 (4) “Total tax” means the tax imposed under this part for the
15 taxable year, before the application under Section 19007 of any
16 payment of estimated tax or any installment thereof, less all credits
17 allowed for the taxable year except for the following:

18 (A) The credit allowed under this section.

19 (B) The credit allowed under Section 17061 (relating to
20 refunds under the Unemployment Insurance Code).

21 (C) The credit allowed under Section 19002 (relating to tax
22 withholding).

23 (D) Any refundable credit that is allowed under this part.

24 SEC. 8. *Section 17053.30 of the Revenue and Taxation Code*
25 *is amended to read:*

26 17053.30. (a) There shall be allowed as a credit against the
27 “net tax,” as defined in Section 17039, an amount equal to 55
28 percent of the fair market value of any qualified contribution made
29 on or after January 1, 2000, and ~~prior to December 31, 2005~~ *not*
30 *later than June 30, 2008*, by the taxpayer during the taxable year
31 to the state, any local government, or any designated nonprofit
32 organization, pursuant to Division 28 (commencing with Section
33 37000) of the Public Resources Code.

34 (b) For purposes of this section, “qualified contribution”
35 means a contribution of property, as defined in Section 37002 of
36 the Public Resources Code, that has been approved for acceptance
37 by the Wildlife Conservation Board pursuant to Division 28
38 (commencing with Section 37000) of the Public Resources Code.

39 (c) In the case of any passthrough entity, the fair market value
40 of any qualified contribution approved for acceptance under

Division 28 (commencing with Section 37000) of the Public Resources Code shall be passed through to the partners or shareholders of the passthrough entity in accordance with their interest in the passthrough entity as of the date of the qualified contribution. For purposes of this subdivision, the term “passthrough entity” means any partnership, ~~S~~ “S” corporation, or limited liability company treated as a partnership.

(d) If the credit allowed by this section exceeds the “net tax,” the excess may be carried over to reduce the “net tax” in the following year, and the succeeding seven years if necessary, until the credit is exhausted.

(e) This credit shall be in lieu of any other credit or deduction which the taxpayer may otherwise claim pursuant to this part with respect to the property or any interest therein that is contributed.

SEC. 9. Section 19164 of the Revenue and Taxation Code is amended to read:

19164. (a) (1) (A) An accuracy-related penalty shall be imposed under this part and shall be determined in accordance with Section 6662 of the Internal Revenue Code, relating to imposition of accuracy-related penalty, except as otherwise provided.

(B) (i) *Except for understatements relating to tax shelter items to which paragraph (5) applies, in the case of any proposed deficiency assessment issued after the last date of the amnesty period specified in Chapter 9.1 (commencing with Section 19730) for any taxable year beginning prior to January 1, 2003, the penalty specified in Section 6662(a) of the Internal Revenue Code shall be computed by substituting “40 percent” for “20 percent.”*

(ii) *Clause (i) shall not apply to any taxable year of a taxpayer beginning prior to January 1, 2003, if, as of the start date of the amnesty program period specified in Section 19731, the taxpayer is then under audit by the Franchise Tax Board, or the taxpayer has filed a protest under Section 19041, or the taxpayer has filed an appeal under Section 19045, or the taxpayer is engaged in settlement negotiations under Section 19442, or the taxpayer has a pending judicial proceeding in any court of this state or in any federal court relating to the tax liability of the taxpayer for that taxable year.*

(2) With respect to corporations, this subdivision shall apply to all of the following:

1 (A) All taxable years beginning on or after January 1, 1990.

2 (B) Any other taxable year for which an assessment is made
3 after July 16, 1991.

4 (C) For purposes of this section, references in Section 6662(e)
5 of the Internal Revenue Code and the regulations thereunder,
6 relating to treatment of an affiliated group that files a consolidated
7 federal return, are modified to apply to those entities required to
8 be included in a combined report under Section 25101 or 25110.
9 For these purposes, entities included in a combined report pursuant
10 to paragraph (4) or (6) of subdivision (a) of Section 25110 shall be
11 considered only to the extent required to be included in the
12 combined report.

13 (3) Section 6662(d)(1)(B) of the Internal Revenue Code is
14 modified to provide that in the case of a corporation, other than an
15 S “S” corporation, that has been contacted by the Franchise Tax
16 Board regarding the use of a potentially abusive tax shelter (within
17 the meaning of Section 19777), there is a substantial
18 understatement of tax for any taxable year if the amount of the
19 understatement for the taxable year exceeds the lesser of:

20 (A) Ten percent of the tax required to be shown on the return
21 for the taxable year (or, if greater, two thousand five hundred
22 dollars (\$2,500)); ~~or~~.

23 (B) Five million dollars (\$5,000,000).

24 (4) Section 6662(d)(2)(A) of the Internal Revenue Code is
25 modified to additionally provide that the excess determined under
26 Section 6662(d)(2)(A) of the Internal Revenue Code shall be
27 determined without regard to items to which Section 19773
28 applies and without regard to items with respect to which a penalty
29 is imposed by Section 19774.

30 (5) For taxpayers that have been contacted by the Franchise Tax
31 Board regarding the use of a potentially abusive tax shelter (within
32 the meaning of Section 19777), Section 6662(d)(2)(B)(i) of the
33 Internal Revenue Code is modified to substitute the phrase “the tax
34 treatment of any item by the taxpayer if the taxpayer had
35 reasonable belief that the tax treatment was more likely than not
36 the proper treatment” for the phrase “the tax treatment of any item
37 by the taxpayer if there is or was substantial authority for such
38 treatment” contained therein.

39 (b) For purposes of Section 6662(d) of the Internal Revenue
40 Code, Section 6664 of the Internal Revenue Code (as modified by

subdivision (d)), Section 6694(a)(1) of the Internal Revenue Code, and this part, the Franchise Tax Board may prescribe a list of positions for which the Franchise Tax Board believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. That list (and any revisions thereof) shall be published through the use of Franchise Tax Board Notices or other published positions. In addition, the “listed transactions” identified and published pursuant to the preceding sentence shall be published on the Web site of the Franchise Tax Board. This subdivision applies only to list of positions relating to abusive tax shelters, within the meaning of Section 19777.

(c) A fraud penalty shall be imposed under this part and shall be determined in accordance with Section 6663 of the Internal Revenue Code, relating to imposition of fraud penalty, except as otherwise provided.

(d) Section 6664 of the Internal Revenue Code, relating to definitions and special rules, shall apply, except as otherwise provided.

(1) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), Section 6664 of the Internal Revenue Code is modified to additionally provide that no penalty shall be imposed under Section 19773 with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for that portion and that the taxpayer acted in good faith with respect to that portion.

(2) Paragraph (1) does not apply to any reportable transaction understatement unless all of the following requirements are met:

(A) (i) The relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under Section 6011 of the Internal Revenue Code, as modified by Section 18407.

(ii) A taxpayer failing to adequately disclose in accordance with Section 6011 of the Internal Revenue Code, as modified by Section 18407, shall be treated as meeting the requirements of this subparagraph, if the penalty for that failure was rescinded under subdivision (e) of Section 19772.

(iii) For taxable years beginning on or before January 1, 2003, “adequately disclosed” includes the disclosure of the tax shelter

1 identification number on the taxpayer's return, as required by
2 subdivision (c) of Section 18628.

3 (B) There is or was substantial authority for that treatment.

4 (C) The taxpayer reasonably believed that treatment was more
5 likely than not the proper treatment.

6 (3) For purposes of subparagraph (C) of paragraph (2) all of the
7 following shall apply:

8 (A) A taxpayer shall be treated as having a reasonable belief
9 with respect to the tax treatment of an item only if that belief meets
10 both of the following requirements:

11 (i) Is based on the facts and law that exist at the time the return
12 of tax that includes that tax treatment is filed.

13 (ii) Relates solely to the taxpayer's chances of success on the
14 merits of that treatment and does not take into account the
15 possibility that the return will not be audited, that the treatment
16 will not be raised on audit, or that the treatment will be resolved
17 through settlement if it is raised.

18 (B) (i) An opinion of a tax advisor may not be relied upon to
19 establish the reasonable belief of a taxpayer if either of the
20 following conditions are met:

21 (I) The tax advisor is described in clause (ii).

22 (II) The opinion is described in clause (iii).

23 (ii) A tax advisor is described in this clause if the tax advisor
24 meets any of the following conditions:

25 (I) Is a material advisor (within the meaning of subdivision (d)
26 of Section 18648) who participates in the organization,
27 management, promotion, or sale of the transaction or who is
28 related (within the meaning of ~~Sections~~ Section 267(b) or
29 707(b)(1) of the Internal Revenue Code) to any person who so
30 participates.

31 (II) Is compensated directly or indirectly by a material advisor
32 with respect to the transaction.

33 (III) Has a fee arrangement with respect to the transaction that
34 is contingent on all or part of the intended tax benefits from the
35 transaction being sustained.

36 (IV) As determined under regulations prescribed by either the
37 Secretary of the Treasury for federal income tax purposes or the
38 Franchise Tax Board, has a continuing financial interest with
39 respect to the transaction.

(iii) For purposes of clause (i), an opinion is disqualified if the opinion meets any of the following conditions:

(I) Is based on unreasonable, factual, or legal assumptions (including assumptions as to future events).

(II) Unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person.

(III) Does not identify and consider all relevant facts.

(IV) Fails to meet any other requirement as either the Secretary of the Treasury for federal income tax purposes or the Franchise Tax Board may by forms and instructions prescribe.

(e) Section 6665 of the Internal Revenue Code, relating to applicable rules, shall apply, except as otherwise provided.

(f) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), Section 461(i)(3)(C) of the Internal Revenue Code is modified by substituting a reference to “Section 1274(b)(3)(B) of the Internal Revenue Code, as modified by subdivision (g) of Section 19164” instead of the reference to “Section 6662(d)(2)(C)(iii)” contained therein.

(g) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), Section 1274(b)(3)(B)(i) of the Internal Revenue Code is modified to provide that for purposes of Section 1274(b)(3)(B) of the Internal Revenue Code, the term “tax shelter” means (1) a partnership or other entity, (2) any investment plan or arrangement, or (3) any other plan or arrangement, if a significant purpose of the partnership, entity, plan, or arrangement is the avoidance or evasion of federal income tax or the tax imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

SEC. 10. Article 4 (commencing with Section 19590) is added to Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

Article 4. Tax Service Fees

19590. The Legislature finds and declares all of the following:

(a) In addition to standard services that the Franchise Tax Board provides to all taxpayers and the public, the board also,

1 upon request, provides specialized taxpayer services to individuals
2 and entities.

3 (b) The provision of specialized taxpayer services imposes
4 additional costs on the agency which are borne by all taxpayers.

5 (c) The full cost of administering specialized taxpayer services
6 should be paid by the individual or entity that requests and receives
7 the specialized taxpayer services, rather than by all taxpayers.

8 (d) Establishing a specialized service fee is the most efficient
9 and convenient way to recover the full costs of administering and
10 providing specialized taxpayer services.

11 (e) The amount of the specialized service fee imposed on an
12 individual or an entity pursuant to this article shall be reasonably
13 related to the actual costs incurred by the board to provide the
14 specialized taxpayer service.

15 (f) The revenues derived from the fees imposed pursuant to this
16 article are not the proceeds of taxes within the meaning Section 3
17 of Article XIII A of the California Constitution.

18 19591. (a) Specialized tax services fees shall be imposed
19 upon the following services provided by the board:

20 (1) Installment payment programs.

21 (2) Expedited services for:

22 (A) Corporation revivor requests.

23 (B) Tax clearance certificate requests.

24 (C) Tax-exempt status requests.

25 (b) (1) For periods on or after the effective date of this section
26 and prior to January 1, 2006, the Franchise Tax Board shall
27 publish by notice a schedule of specialized tax services fees to be
28 imposed, which notice shall be exempt from the requirements of
29 Chapter 3.5 (commencing with Section 11340) of Part 1 of
30 Division 3 of Title 2 of the Government Code. The amounts of these
31 fees under this paragraph shall be calculated in the same general
32 manner as required under paragraph (2).

33 (2) Commencing on January 1, 2006, the amount of the
34 specialized tax services fees shall be established by the board
35 through regulations adopted pursuant to Chapter 3.5
36 (commencing with Section 11340) of Part 1 of Division 3 of Title
37 2 of the Government Code, and shall be established in the manner
38 and in the amounts necessary to reimburse the board for the costs
39 of administering the specialized services, including the board's
40 direct and indirect costs for providing specialized tax services.

1 19592. All fees received by the Franchise Tax Board under
2 this article shall be treated as reimbursement for the board's costs.

3 SEC. 11. Chapter 9.1 (commencing with Section 19730) is
4 added to Part 10.2 of Division 2 of the Revenue and Taxation Code,
5 to read:

6
7 CHAPTER 9.1. TAX AMNESTY
8

9 19730. The Franchise Tax Board shall administer a tax
10 amnesty program for taxpayers subject to Part 10 (commencing
11 with Section 17001) and Part 11 (commencing with Section
12 23001), as provided in this chapter.

13 19731. The tax amnesty program shall be conducted during a
14 two-month period beginning February 1, 2005, and ending March
15 31, 2005, inclusive, or during a timeframe ending no later than
16 June 30, 2005, pursuant to Section 19733. The program shall
17 apply to tax liabilities for taxable years beginning before January
18 1, 2003.

19 19732. (a) For any taxpayer who meets each of the
20 requirements of Section 19733, subject to the conditions set forth
21 in Section 19737:

22 (1) The Franchise Tax Board shall waive all unpaid penalties
23 and fees imposed by this part for each taxable year for which tax
24 amnesty is allowed, but only to the extent of the amount of any
25 penalty or fee that is owed as a result of previous nonreporting or
26 underreporting of tax liabilities or prior nonpayment of any taxes
27 previously assessed or proposed to be assessed for that taxable
28 year.

29 (2) Except as provided in subdivision (b), no criminal action
30 shall be brought against the taxpayer for the taxable years for
31 which tax amnesty is allowed for the nonreporting or
32 underreporting of tax liabilities or the nonpayment of any taxes
33 previously assessed or proposed to be assessed.

34 (b) This chapter shall not apply to violations of this part, for
35 which, as of February 1, 2005, any of the following applies:

36 (1) The taxpayer is on notice of a criminal investigation by a
37 complaint having been filed against the taxpayer.

38 (2) The taxpayer is under criminal investigation.

39 (3) A court proceeding has already been initiated.

1 (c) This section shall not apply to any nonreported or
2 underreported tax liability amounts attributable to tax shelter
3 items that could have been reported under either the voluntary
4 compliance initiative under Chapter 9.5 (commencing with
5 Section 19751) or the Internal Revenue Service's Offshore
6 Voluntary Compliance Initiative described in Revenue Procedure
7 2003-11.

8 (d) No refund or credit shall be granted with respect to any
9 penalty or fee paid with respect to a taxable year prior to the time
10 the taxpayer makes a request for tax amnesty for that taxable year
11 pursuant to Section 19733.

12 (e) Notwithstanding Chapter 6 (commencing with Section
13 19301), a taxpayer may not file a claim for refund or credit for any
14 amounts paid in connection with the tax amnesty program under
15 this chapter.

16 19733. (a) This chapter shall apply to any taxpayer who,
17 during the tax amnesty program period specified in Section 19731:

18 (1) Is eligible to participate in the tax amnesty program.

19 (2) Files a completed amnesty application with the Franchise
20 Tax Board, signed under penalty of perjury, electing to participate
21 in the tax amnesty program.

22 (3) Within 60 days after the conclusion of the tax amnesty
23 period, does the following:

24 (A) (i) For any taxable year eligible for the tax amnesty
25 program where the taxpayer has not filed any required return, files
26 a completed original tax return for that year, or

27 (ii) For any taxable year eligible for the tax amnesty program
28 where the taxpayer filed a return but underreported tax liability on
29 that return, files an amended return for that year.

30 (B) Pays in full any taxes and interest due for each taxable year
31 described in clauses (i) and (ii) of subparagraph (A), as
32 applicable, for which amnesty is requested, or applies for an
33 installment payment agreement under subdivision (b). For
34 taxpayers who have not paid in full any taxes previously proposed
35 to be assessed, pays in full the taxes and interest due for that
36 portion of the proposed assessment for each taxable year for which
37 amnesty is requested or applies for an installment payment
38 agreement under subdivision (b).

39 (4) For purposes of complying with the full payment provisions
40 of paragraph (3) of subdivision (a), if the full amount due is paid

1 within the period set forth in paragraph (3) of subdivision (c) of
2 Section 19101 after the date the Franchise Tax Board mails a
3 notice resulting from the filing of an amnesty application or the full
4 amount is paid within 60 days after the conclusion of the tax
5 amnesty period, the full amount due shall be treated as paid during
6 the amnesty period.

7 (5) In the case of any taxpayer that has filed for bankruptcy
8 protection under Title 11 of the United States Code, submits an
9 order from a Federal Bankruptcy Court allowing the taxpayer to
10 participate in the amnesty program.

11 (b) (1) For purposes of complying with the full payment
12 provisions of subparagraph (B) of paragraph (3) of subdivision
13 (a), the Franchise Tax Board may enter into an installment
14 payment agreement, but only if final payment under the terms of
15 that installment payment agreement is due and is paid no later than
16 June 30, 2006.

17 (2) Any installment payment agreement authorized by this
18 subdivision shall include interest on the outstanding amount due
19 at the rate prescribed in Section 19521.

20 (3) Failure by the taxpayer to fully comply with the terms of an
21 installment payment agreement under this subdivision shall render
22 the waiver of penalties and fees under Section 19732 null and void,
23 unless the Franchise Tax Board determines that the failure was due
24 to reasonable cause and not due to willful neglect.

25 (4) In the case of any failure described under paragraph (3), the
26 total amount of tax, interest, fees, and all penalties shall become
27 immediately due and payable.

28 (c) (1) The application required under paragraph (2) of
29 subdivision (a) shall be in the form and manner specified by the
30 Franchise Tax Board, but in no case shall a mere payment of any
31 taxes and interest due, in whole or in part, for any taxable year
32 otherwise eligible for amnesty under this part, be deemed to
33 constitute an acceptable amnesty application under this part. For
34 purposes of the prior sentence, the application of a refund from one
35 taxable year to offset a tax liability from another taxable year
36 otherwise eligible for amnesty shall not, without the filing of an
37 amnesty application, be deemed to constitute an acceptable
38 amnesty application under this part.

39 (2) The Legislature specifically intends that the Franchise Tax
40 Board, in administering the amnesty application requirement

1 under this part, make the amnesty application process as
2 streamlined as possible to ensure participation in the amnesty
3 program will be available to as many taxpayers as possible without
4 otherwise compromising the Franchise Tax Board's ability to
5 enforce and collect the taxes imposed under Part 10 (commencing
6 with Section 17001) and Part 11 (commencing with Section
7 23001).

8 (d) Upon the conclusion of the tax amnesty program period, the
9 Franchise Tax Board may propose a deficiency upon any return
10 filed pursuant to subparagraph (A) of paragraph (3) of subdivision
11 (a), impose penalties and fees, or initiate criminal action under
12 this part with respect to the difference between the amount shown
13 on that return and the correct amount of tax. This action shall not
14 invalidate any waivers previously granted under Section 19732.

15 (e) All revenues derived pursuant to subdivision (c) shall be
16 subject to Sections 19602 and 19604.

17 19734. Notwithstanding any other provision of this chapter, if
18 any overpayment of tax shown on an original or amended return
19 filed under this article is refunded or credited within 180 days after
20 the return is filed, no interest shall be allowed under Section 19340
21 on that overpayment.

22 19735. (a) The Franchise Tax Board may issue forms,
23 instructions, notices, rules, or guidelines, and take any other
24 necessary actions, needed to implement this chapter, specifically
25 including any forms, instructions, notices, rules, or guidelines that
26 specify the form and manner of any acceptable form of amnesty
27 application described in Section 19733.

28 (b) Chapter 3.5 (commencing with Section 11340) of Part 1 of
29 Division 3 of Title 2 of the Government Code does not apply to any
30 standard, criterion, procedure, determination, rule, notice, or
31 guideline established or issued by the Franchise Tax Board
32 pursuant to this chapter.

33 19736. (a) The Franchise Tax Board shall conduct a public
34 outreach program and adequately publicize the tax amnesty
35 program so as to maximize public awareness and to make
36 taxpayers aware of the program. In addition, the Franchise Tax
37 Board shall make taxpayers aware of the new and increased
38 penalties associated with taxpayer failure to participate in the tax
39 amnesty program.

(b) The Franchise Tax Board shall make reasonable efforts to identify taxpayer liabilities and, to the extent practicable, will send written notice to taxpayers of their eligibility for the tax amnesty program. However, failure of the Franchise Tax Board to notify a taxpayer of the existence or correct amount of a tax liability eligible for amnesty shall not preclude the taxpayer from participating in the tax amnesty program, nor shall such failure be grounds for abating the penalty imposed under Section 19777.5.

19737. (a) In the case of any taxpayer who participates in the tax amnesty program under this chapter, receives a waiver of all penalties and fees, and subsequently fails to pay any amount of tax (including penalties, fees and other amounts) for the 2005 or 2006 taxable year, which failure results in the imposition of a collection cost recovery fee under Section 19254, then the previous waiver of the penalties and fees under the tax amnesty program shall be rendered null and void, and all penalties, fees, and associated interest shall be immediately due and payable.

(b) Article 3 (commencing with Section 19031), relating to deficiency assessments, shall not apply with respect to the assessment or collection of any penalty, fee, or interest imposed pursuant to subdivision (a).

(c) Notwithstanding Chapter 6 (commencing with Section 19301), a taxpayer may not file a claim for refund or credit for any amounts paid in connection with any penalty, fee, or interest imposed pursuant to subdivision (a).

19738. Any taxpayer who has an existing installment payment agreement under Section 19008 as of the start of the amnesty program, and who does not participate in the amnesty program, may not be subject to the penalty imposed under Section 19777.5.

SEC. 12. Section 19777.5 is added to the Revenue and Taxation Code, to read:

19777.5. (a) There shall be added to the tax for each taxable year for which amnesty could have been requested:

(1) For amounts that are due and payable on the last day of the amnesty period, an amount equal to 50 percent of the accrued interest payable under Section 19101 for the period beginning on the last date prescribed by law for the payment of that tax (determined without regard to extensions) and ending on the last day of the amnesty period specified in Section 19731.

(2) For amounts that become due and payable after the last date of the amnesty period, an amount equal to 50 percent of the interest computed under Section 19101 on any final amount, including final deficiencies and self-assessed amounts, for the period beginning on the last date prescribed by law for the payment of the tax for the year of the deficiency (determined without regard to extensions) and ending on the last day of the amnesty period specified in Section 19731.

(b) The penalty imposed by this section is in addition to any other penalty imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(c) This section does not apply to any amounts that are treated as paid during the amnesty program period under paragraph (4) of subdivision (a) of Section 19733 or paragraph (1) of subdivision (b) of Section 19733.

(d) Article 3 (commencing with Section 19031), (relating to deficiency assessments) shall not apply with respect to the assessment or collection of any penalty imposed by subdivision (a).

(e) Notwithstanding Chapter 6 (commencing with Section 19301), a taxpayer may not file a claim for refund or credit for any amounts paid in connection with the penalty imposed in subdivision (a).

SEC. 13. Section 23630 of the Revenue and Taxation Code is amended to read:

23630. (a) There shall be allowed as a credit against the “tax,” as defined in Section 23036, an amount equal to 55 percent of the fair market value of any qualified contribution made on or after January 1, 2000, and ~~prior to December 31, 2005~~ not later than June 30, 2008, by the taxpayer during the taxable year to the state, any local government, or any designated nonprofit organization, pursuant to Division 28 (commencing with Section 37000) of the Public Resources Code.

(b) For purposes of this section, “qualified contribution” means a contribution of property, as defined in Section 37002 of the Public Resources Code, that has been approved for acceptance by the Wildlife Conservation Board pursuant to Division 28 (commencing with Section 37000) of the Public Resources Code.

(c) In the case of any passthrough entity, the fair market value of any qualified contribution approved for acceptance under

1 Division 28 (commencing with Section 37000) of the Public
2 Resources Code shall be passed through to the partners or
3 shareholders of the passthrough entity in accordance with their
4 interest in the passthrough entity as of the date of the qualified
5 contribution. For purposes of this subdivision, the term
6 “passthrough entity” means any partnership or ~~S~~ “S” corporation.

7 (d) If the credit allowed by this section exceeds the “tax,” the
8 excess may be carried over to reduce the “tax” in the following
9 year, and the succeeding seven years if necessary, until the credit
10 is exhausted.

11 (e) This credit shall be in lieu of any other credit or deduction
12 that the taxpayer may otherwise claim pursuant to this part with
13 respect to the property or any interest therein that is contributed.

14 *SEC. 14. This act is an urgency statute necessary for the*
15 *immediate preservation of the public peace, health, or safety*
16 *within the meaning of Article IV of the Constitution and shall go*
17 *into immediate effect. The facts constituting the necessity are:*

18 *In order to alleviate the current fiscal crisis, it is necessary that*
19 *this act go into immediate effect.*

